REMARKS

Reconsideration of this application based on the foregoing Amendments and the following Remarks is respectfully requested.

In the instant Office Action of April 6, 2004, the Examiner cites the following references:

1.   Wyman, US 5,204,897, April 20, 1993.

2.   Ohran, et al, US 5,978,565, November 2, 1999.

3.   Badinovatz, et al, US 5,704,032, December 30, 1997.

4.   Novaes, US 6,507,863 B2, January 14, 2003.

5.   Baratti et al, GB 2 346 989 A, application published August 23, 2000.

6.   Bains, et al, US 5,579,222, November 26, 1999.

The Applicants previously amended claims 1, 3, 4, 11, 13, 20 and 26-28. Claims 37-40 previously were added. The Applicants respectfully argued in the previous response that there is no motivation or suggestion to combine the references.

At the outset, prior to addressing the rejections over the prior art, under the Applicants' own initiative, the Applicants call to the Examiner's attention that in order to improve grammatical form, the Applicants have amended claims 1, 3 and 4 to correct an obvious grammatical error in the phrase "the new leader server further programmed" to read -- the new leader server is further programmed--. In addition, also to correct an obvious grammatical error, the applicants have amended claim 5 to change the phrase "wherein the pool of license servers are programmed" to read -- wherein the pool of license servers is programmed--. No new matter has been added by the amendments of claims 1, 3, 4, and 5.

In claims 11, 13, 26, 31, 38, 39 and 40, the applicants have amended the term "licensed server" to read -- license server -- to make the usage of the term uniform with the intent of the claim language. No new matter has been added.

In the instant Office Action, the Examiner rejects claims 1-5 and 11-14 under 35 U.S.C. 103(a) as being unpatentable over Wyman in view of Ohran and further in view of Badovinatz and further in view of Novaes. The Examiner also rejects claims 20-36 on the same grounds as for claims 1-5 and 11-14, as asserted by the Examiner to be appropriate.

The Examiner rejects new claims 37-40 under 35 U.S.C. 103(a) as being unpatentable over Wyman in view of Ohran and further in view of Badinovatz, Novaes and Applicants' disclosure.

The Examiner rejects claims 6 and 15 under 35 U.S.C. 103(a) as being unpatentable over Wyman in view of Ohran and further in view of Badinovatz, Novaes, Applicants' disclosure and Baratti.

The Examiner rejects claims 7-10 and 16-19 under 35 U.S.C. 103(a) as being unpatentable over Wyman in view of Ohran and further in view of Badinovatz, Novaes and Bains.

With respect to claims 1 and 11, the Examiner expresses his personal opinion that maintaining a record is an inherent and obvious requirement to protect against fraud and theft of the protected software. With respect to claims 26 and 34, the Examiner argues that the prior art discloses the limitations of the claims including a leader priority list.

With respect to claim 28, the Examiner contends that the combination of the Wyman, Ohran et al., Badinovatz et al. and Novaes patents, further in combination with what was admitted as prior art in the application, suggests license servers authorizing use of protected software, and that follower servers and leader servers are equivalently programmable to serve the same functions and accomplish the same goals using the same techniques.

With respect to claims 7 and 16, the Examiner asserts that the Bains et al. patent, at column 7, lines 43-46 of the patent, discloses using a "ping" to determine if a server is still functioning properly, and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the disclosed inventions of the Wyman, Ohran et

al. and Badinovatz et al. patents with the invention disclosed in the Bains et al. patent, because using a periodic signal to ensure that a license server is operating properly ensures that usage rights associated with each license is not being fraudulently manipulated.

With respect to claims 10 and 19, the Examiner, at page 25 in the office action, asserts that the Badinovatz et al. patent, at column 8, lines 1-44, discloses using sequence numbers to keep track of messages when a server fails or when a new leader is selected, and that it would have been obvious to one of ordinary skill in the art at the time the invention was made to combine the teachings of the Wyman, Ohran et al., Badinovatz et al. and Novaes patents with the teachings of the Bains et al. patent because, if after determining that the local license server is no longer functional, a new license server must be selected to replace the licensing capabilities, and there must be an assurance that the new server leader has a current list of license data.

In response, the Applicants respectfully maintain that only the Wyman, Baratti and Bains references are at all related to license servers, and that none of the cited references, taken alone or in combination, teaches or suggests that one skilled in the art would combine prior art references directed to, for example, the distribution of electronic mail, servers purely acting as FILE servers per Ohran et al, multicasting in multi-protocol networks per Novaes, or just distributed computing without even including servers per se per Badinovatz et al. to yield the present invention of claims 1-40.

MPEP § 2141.01(a) provides that "[i]n order to rely on a reference as a basis for rejection of an Applicant's invention, the reference must either be in the field of Applicant's endeavor or, if not, then be reasonably pertinent to the particular problem with which the inventor was concerned." In Re Oetiker, 977 F.2d 1433, 1446, 24 U.S.P.Q.2d 1443, 1445 (Fed. Cir. 1992).

The Badinovatz et al., Novaes, and Ohran et al. references are not properly combinable with the Wyman, Baratti et al. and Bains et al. patents, because the Badinovatz et al., Novaes, and Ohran et al. patents are non-analogous art. The Wyman, Baratti et al. and Bains et al. patents disclose license servers. The remaining references do not. There is no suggestion or motivation within the Novaes, Ohran et al. and Badinovatz et al. patents that
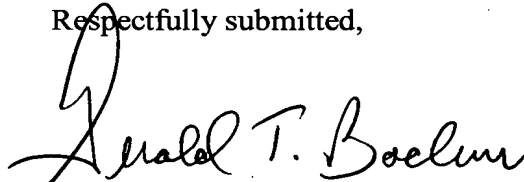
would enable one to combine the teachings of a multicast routing facility as disclosed in the Novaes patent, a method for group leader recovery in the Badovinatz et al. patent and a method for rapid recovery from a network file server failure as disclosed in Ohran et al. with those of a license server.

Even if one of ordinary skill in the art were somehow motivated to combine the references cited, the hypothetical device resulting from such a combination would not yield the advantages of the present invention of claims 1-40.

As a result, claims 1-40 patentably distinguish over the prior art. Consequently, the Applicants respectfully request that the Examiner withdraw the rejections of claims 1-40 over the prior art.

Reconsideration of this application in view of the foregoing Amendment and Remarks is respectfully requested. The foregoing Amendment and Remarks establish the patentable nature of all of the claims pending in the application, i.e, claims 1-40. No new matter has been added. Wherefore, early and favorable reconsideration and issuance of a Notice of Allowance are respectfully requested.

Respectfully submitted,

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